

No. PD-0176-18

**COURT OF CRIMINAL APPEALS
OF TEXAS**

FILED
COURT OF CRIMINAL APPEALS
7/12/2019
DEANA WILLIAMSON, CLERK

The State of Texas,
Appellant

v.

Jose Ruiz
Appellee

from the Court of Appeals for the
Thirteenth Judicial District at Corpus Christi and Edinburg

13-13-00507-CR

Additional Citation

To the Honorable Judges of the Court of Criminal Appeals:

COMES NOW, THE STATE OF TEXAS, Appellant in the above cause, and files this Notice of Additional Citation for the Court's consideration. The United States Supreme Court's holding in *Mitchell v. Wisconsin*, encompasses the issue in this case, whether it is unreasonable under the Fourth Amendment for an officer to rely on a driver's implied consent to a blood draw when the driver was involved in an accident, there is probable cause to believe he is intoxicated, and

where the driver's own unconsciousness prevents the officer from effectively obtaining the driver's actual consent.

The Supreme Court held that “when police have probable cause to believe a person has committed a drunk-driving offense and the driver’s unconsciousness or stupor requires him to be taken to the hospital or similar facility before the police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a blood test to measure the driver’s BAC without offending the Fourth Amendment.”¹ *Mitchell v. Wisconsin*, No. 18-6210, 2019 U.S. LEXIS 4400, 2019 WL 2619471 *24 (June 27, 2019). The Court highlighted that

the importance of the needs served by BAC testing is hard to overstate. The bottom line is that BAC tests are needed for enforcing laws that save lives. The specifics, in short, are these: Highway safety is critical; it is served by laws that criminalize driving with a certain BAC level; and enforcing these legal BAC limits requires efficient testing to obtain BAC evidence, which naturally dissipates. So BAC tests are crucial links in a chain on which vital interests hang. And

¹ Justice Thomas concurred with the plurality holding that the warrantless blood draw in this case was justified under the Fourth Amendment; however, Justice Thomas asserted, as he did in *McNeely*, that the more appropriate holding would be a “*per se* rule” namely, that the “natural metabolism of alcohol in the blood stream ‘creates an exigency once police have probable cause to believe the driver is drunk,’ regardless of whether the driver is conscious.” *Mitchell*, No. 18-6210, 2019 U.S. LEXIS 4400, 2019 WL 2619471 *25.

when a breath test is unavailable to advance those aims, a blood test becomes essential.

Mitchell, No. 18-6210, 2019 U.S. LEXIS 4400, 2019 WL 2619471 *15-16.

The Court explained that “not only is the link to pressing interests here tighter; the interests themselves are greater: Drivers who are drunk enough to pass out at the wheel or soon afterward pose a much greater risk. It would be perverse if the more wanton behavior were rewarded—if the more harrowing threat were harder to punish.” *Mitchell*, No. 18-6210, 2019 U.S. LEXIS 4400, 2019 WL 2619471 *19. The Court made it clear that it “did not hold that the State established that the facts of this particular case involved exigent circumstances under *McNeely*. Rather, [it adopted] a rule for an entire category of cases—those in which a motorist believed to have driven under the influence of alcohol is unconscious and thus cannot be given a breath test.” *Mitchell*, No. 18-6210, 2019 U.S. LEXIS 4400, 2019 WL 2619471 footnote 2.

Here, Ruiz was involved in a two vehicle accident and fled the scene of the accident. (Ct. R. vol. 1 of 1, at 7). After an investigation Ruiz was located unresponsive in a field behind a carwash. (Ct. R. vol. 1 of 1, at 8-9). Sergeant McBride observed the very strong odor of alcoholic beverages coming from Ruiz. (Ct. R. vol. 1 of 1, at 9-10). Based

on her observations of Ruiz, Sergeant McBride believed that Ruiz was unresponsive due to the amount of alcohol in his system. (Ct. R. vol. 1 of 1, at 10-11). EMS arrived on the scene to treat Ruiz and attempted several sternum rubs to try and get Ruiz to be responsive but Ruiz never responded. (Ct. R. vol. 1 of 1, at 11). After an assessment EMS determined that Ruiz needed to be transported to the hospital for treatment. (Ct. R. vol. 1 of 1, at 11). Sergeant McBride ran Ruiz's criminal history and discovered Ruiz had four convictions for DWI. (Ct. R. vol. 1 of 1, at 17). Sergeant McBride prepared the necessary paperwork and a qualified hospital technician drew Ruiz's blood. (Ct. R. vol. 1 of 1, at 12). Ruiz remained unresponsive the entire time. (Ct. R. vol. 1 of 1, at 12-13).

Just as the Supreme Court in *Mitchell* found a driver's unconsciousness will in almost all cases provide exigency and thus render a warrantless blood draw reasonable under the Fourth Amendment, this Court should similarly find the blood draw reasonable in the instant case.

Respectfully submitted,

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Certificate of Service

The State has e-served Chris Iles, counsel for Jose Ruiz, through the eFileTexas.gov filing system and sent a copy to The Honorable Stacey M. Soule, State Prosecuting Attorney, on this, the 10th day of July, 2019.

/s/ Keri L. Miller